



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 13 2013

REPLY TO THE ATTENTION OF:

WC-15J

CERTIFIED MAIL 7009 1680 0000 7669 4360
RETURN RECEIPT REQUESTED

Ex. 6 (Personal Privacy)

Ex. 6 (Personal Privacy)

Ex. 6 (Personal Privacy)

Farms, Inc.

Ex. 6 (Personal Privacy)

Ex. 6 (Personal Privacy)

Subject:

Ex. 6 (Personal Privacy)

Farms, Inc.

Administrative Consent Order

Pursuant to 33 U.S.C. §§ 1318(a) and 1319(a)

Docket No. V-W-12-AO-14

Dear

Ex. 6 (Personal Privacy)

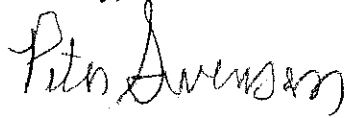
Enclosed is your signed copy of the Administrative Consent Order (Agreement) that was agreed to and signed by you on August 28, 2013.

Thank you for discussing this Agreement with the U.S. Environmental Protection Agency on October 29, 2012, and for implementing interim measures in response to the original September 24, 2012 Administrative Order.

Please be advised that neither the issuance of this Agreement by EPA nor compliance with its terms affects Ex. 6 (Personal Privacy) Farms, Inc.'s obligation to comply with the Clean Water Act (CWA) or any other laws or regulations, nor does it preclude further enforcement action pursuant to 33 U.S.C. § 1319(a) for the violations cited herein or any other violations committed by Bremmer Farms, Inc. Failure to comply with the Agreement may subject you to further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319(a).

If you have any questions concerning this matter, please contact Jack Bajor of my staff, at (312) 353-4633.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tinka G. Hyde".

for Tinka G. Hyde
Director, Water Division

cc: Bud Bridgewater, IEPA
Lee Herrin, IEPA, Rockford Regional Office

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Ex. 6 (Personal Privacy)
Bremmer Farms, Inc.
Ex. 6 (Personal Privacy)

Respondent

) DOCKET NO. V-W-12-AO-14
)
) Proceeding Under Sections 308(a) and
) 309(a) of the Clean Water Act, 33 U.S.C.
) §§ 1318(a) and 1319(a)
)
)

ADMINISTRATIVE CONSENT ORDER

1. The Director of the Water Division, U.S. Environmental Protection Agency (EPA), Region 5, is entering into an Administrative Consent Order (ACO or Agreement) with Bremmer Farms, Inc. (Respondent) pursuant to Sections 308(a) and 309(a) of the Clean Water Act (Act), 33 U.S.C. §§ 1318(a) and 1319(a).

STATUTORY BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except, *inter alia*, in compliance with a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
3. Section 308(a) of the Act, 33 U.S.C. § 1318(a), provides, *inter alia*, that whenever required to carry out the objective of this chapter, the Administrator of EPA shall require the owner or operator of any point source to: establish and maintain such records; make such reports; and provide such other information as she may reasonably require.
4. Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), authorizes the Administrator of EPA to issue a compliance order to, or commence a civil action for appropriate relief against, any person who the Administrator finds is in violation of, *inter alia*, Section 301(a) of the Act.

DEFINITIONS

5. All terms used but not defined in this ACO shall have the meanings provided to them in the Act and EPA regulations promulgated under the Act.
6. "Animal feeding operation" or "AFO" means, among other things, "a lot or facility where . . .
(i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period and, (ii) Crops, vegetation,

forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility.” 40 C.F.R. § 122.23(b)(1).

7. “Concentrated animal feeding operation” or “CAFO” means, among other things an “... AFO that is defined as a Large CAFO or as a Medium CAFO... . Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.” 40 C.F.R. § 122.23(b)(2).
8. “Discharge” or “discharge of a pollutant” means, among other things, any addition of any pollutant to navigable waters from any point source. *See* Sections 502(12), (16) of the Act, 33 U.S.C. §§ 1362(12), (16); 40 C.F.R. § 122.2.
9. “Land application area” means land under the control of the Respondent, whether that land is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied. 40 C.F.R. § 122.23(b)(3).
10. “Manure” means “manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.” 40 C.F.R. § 122.23(b)(5).
11. “Medium CAFO” means an animal feeding operation that stables or confines as many as or more than the numbers of animals specified in any of the following ranges: 300 to 999 cattle other than dairy cows or veal calves; 200 to 699 mature dairy cows; 750 to 2,499 swine each weighing 55 pounds or more; or 3,000 to 9,999 swine each weighing less than 55 pounds; and either one of the following conditions is met: (A) pollutants are discharged from the production area into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or (B) pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the production area or otherwise come into direct contact with the animals confined in the operation. 40 C.F.R. § 122.23(b)(6)(ii)(A) & (B).
12. “Navigable waters” means the waters of the United States. Section 502(7) of the Act, 33 U.S.C. § 1362(7).
13. “Nutrient Management Plan” means the plan described in and required by Section IV.C. of this ACO.
14. “Overflow” means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or stormwater can be contained by the structure.
15. “Person” means, among other things, an individual, association, partnership, or corporation. Section 502(5) of the Act, 33 U.S.C. § 1362(5); 40 C.F.R. § 122.2.
16. “Point source” means, among other things, “any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, ... [or] concentrated

animal feeding operation ... from which pollutants are or may be discharged."
Section 502(14) of the Act, 33 U.S.C. § 1362(14); 40 C.F.R. § 122.2.

17. "Pollutant" means, among other things, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, wrecked or discarded equipment, rock, sand, cellar dirt, and agricultural waste discharged into water. Section 502(6) of the Act, 33 U.S.C. § 1362(6); 40 C.F.R. § 122.2.
18. "Process wastewater" means water directly or indirectly used in the operation of the animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding. 40 C.F.R. § 122.23(b)(7).
19. "Production area" means that part of the site that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment area. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility and any area used in the storage, handling, treatment, or disposal of mortalities. 40 C.F.R. § 122.23(b)(8).
20. "Site" means the facility or facilities owned or operated by Respondent located at or about or adjoining **Ex. 6 (Personal Privacy)**, Jo Daviess County, including but not limited to the land application area, the production area, and adjacent land used in connection with the land application area and/or production area.
21. "Waters of the United States" means, in accordance with 40 C.F.R. § 122.2, among other things:
 - a. all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce;
 - b. all interstate waters;
 - c. all other waters such as intrastate lakes, rivers, streams (including intermittent streams), the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters;

- d. all impoundments of waters otherwise defined as waters of the United States under this definition; and
- e. tributaries of waters identified in paragraphs (a) through (d) of this definition.

ALLEGATIONS AND CONCLUSIONS OF LAW

- 22. Respondent is a registered corporation in the State of Illinois, and as such, Respondent is a "person" as that term is defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5), and implementing regulations at 40 C.F.R. § 122.2.
- 23. Respondent owns or operates a heifer growing operation facility located at the Site.
- 24. The Site is an animal feeding operation because:
 - a. the Site includes lots or facilities where heifers have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, within the meaning of 40 C.F.R. § 122.23(b)(1)(i); and
 - b. crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of those lots or facilities, within the meaning of 40 C.F.R. § 122.23(b)(1)(ii).
- 25. The Site is a CAFO and a Medium CAFO because the Site stables or confines as many as or more than 300 to 999 cattle other than dairy cows or veal calves and has a man-made conveyance structure capable of discharging pollutants to waters of the United States. Properties making up the Site adjoin each other or use a common area or a system for disposal of wastes.
- 26. On March 8 and March 9, 2012, personnel from EPA Region 5 conducted an inspection at the site (the Inspection). A copy of the Inspection Report generated by EPA Region 5 as a result of the Inspection (Inspection Report) was sent to you September 24, 2012.
- 27. During the Inspection, EPA Region 5 personnel identified the following Discharges at the Site:
 - 1. South Farm
 - Runoff pathway of process wastewater from the outdoor heifer pen.
 - Runoff pathway of process wastewater from uncovered distillers and feed mixing pad.
 - Runoff pathway of process wastewater from silage leachate source.
 - 2. North Farm
 - Runoff pathway of process wastewater from unvegetated pasture and feed lot areas.
 - Runoff pathway of process wastewater from the outdoor heifer pen.
 - Runoff pathway of process wastewater from holes at the base of the manure alley at the old swine barn location.
- 28. Spring Branch is a perennial waterway and a tributary to the Pecatonica River.

29. The unnamed tributary, Spring Branch and Pecatonica River are Navigable Waters and Waters of the United States.
30. The Site is a Point Source.
31. The Discharge described above is a Discharge of a Pollutant(s) prohibited by the Act.
32. As of March 9, 2012, Respondent did not have, and had not applied for, an NPDES permit for the discharge of pollutants from the Site.
33. As a CAFO which Discharges, the Site is subject to the NPDES permitting requirements of Section 402 of the Act, 33 U.S.C. § 1342, and 40 C.F.R. Part 122.
34. By discharging Pollutants from the Site without a permit, Respondent violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).
35. By discharging Pollutants from the Site without having applied for an NPDES permit, Respondent violated 33 U.S.C. § 1318 and 40 C.F.R. § 122.23(d).
36. Respondent denies that its properties meet the definition of a CAFO or Medium CAFO based on Respondent's contention that its properties do not "adjoin each other or use a common area or a system for disposal of wastes" pursuant to 40 C.F.R. § 122.23(b)(2), and Respondent further denies wrong doing, but Respondent acknowledges that the allegations against it are sufficient to support the resolution and Compliance Requirements set forth herein.

COMPLIANCE REQUIREMENTS

37. Upon the effective date of this Agreement, Respondent shall cease all unpermitted discharges from the site.
38. Respondent shall continue or maintain the measures taken in accordance with EPA's September 24, 2012 Order, Docket Number V-W-12-AO-14, and described in Respondent's letter of October 31, 2012.
39. Within 90 days of the effective date of this Agreement, Respondent shall provide to EPA the proposed contours of the berm that it proposes to install to prevent migration of leachate runoff from the South Farm and the timeframe for installation of that berm.
40. Within 90 days of the effective date of this Agreement, Respondent shall submit a Nutrient Management Plan with certification by a nutrient management planner to EPA that:
 - a. ensures adequate storage of manure, litter, and process waste water, including procedures to ensure proper operation and maintenance of the storage facilities;

- b. ensures that mortalities (*i.e.*, dead animals) are not disposed of in a liquid manure, stormwater, or process waste water storage or treatment system that is not specifically designed to treat mortalities;
 - c. ensures that clean water is diverted, as appropriate, from the production area;
 - d. prevents direct contact of confined animals with waters of the United States;
 - e. ensures that chemical wastes and other non-livestock wastes handled on-site are not disposed of in any manure, litter, process waste water, or stormwater storage or treatment system unless such system is specifically designed to treat such chemicals and other contaminants;
 - f. identifies site-specific conservation practices to be implemented, including, as appropriate, buffers, or equivalent practices, to control discharges of manure, litter, or process waste water to waters of the United States;
 - g. identifies protocols for appropriate testing of manure, litter, process waste water, and soil;
 - h. establishes protocols to land apply manure, litter, and process waste water in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process waste water; and
 - i. identifies specific records that will be maintained to document the implementation and management of the requirements of this Agreement.
41. Respondent shall maintain on-site a monthly record of the type and number of animals maintained at the Site. The records must include:
- a. The type of animal (e.g. beef, dry dairy cow, heifer, calf) at each North and South Farms;
 - b. The total number of animals at each facility by type and in aggregate; and
 - c. The age or weight of animals.
42. Respondent shall submit to EPA annual reports for calendar year 2013 and calendar year 2014 that set forth the information described in paragraph 41 above as well as any changes or updates in the Site condition as it pertains to paragraphs 38 and 39 above. Each report is due by January 15, of the following calendar year, *i.e.* January 15, 2014 and January 15, 2015. Each annual report must contain:
- a. The maximum number and type of animals confined, whether in open containment or housed under roof;
 - b. The estimated amount of total manure, litter, and process waste water generated at the Site in the previous 12 months;
 - c. The estimated amount of total manure, litter, and process waste water transferred to another person from the Site in the previous 12 months (tons or gallons);

- d. The total number of acres for land application covered by the Nutrient Management Plan;
- e. The total number of acres under the control of Respondent that were used for land application of manure, litter, and process waste water in the last 12 months;
- f. A summary of all manure, litter, and process waste water Discharges from the production area that have occurred in the previous 12 months, including the date, time, and approximate volume of such Discharges; and
- g. A statement indicating whether the current version of the Nutrient Management Plan was developed or approved by a certified nutrient management planner.

FORCE MAJEURE

43. If an event occurs that causes or may cause a delay in complying with this Agreement:
- a. Respondent must notify EPA in writing within 10 days after learning of an event that caused or may cause a delay in complying with this Agreement. The notice must describe the anticipated length of the delay, its cause(s), Respondents's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to comply with the Agreement.
 - b. If the parties agree that circumstances beyond the control of the Respondent caused or may cause a delay in complying with the Agreement, the parties will stipulate to an extension of time no longer than the period of delay.
 - c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in complying with the Agreement, EPA will notify respondent in writing of its decision and any delays in complying with the Agreement will not be excused.
 - d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in complying with the Agreement. Increased costs for complying with the Agreement will not be a basis for an extension of time under paragraph b., above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

SUBMITTALS

44. Respondent must submit all information required by this Agreement to EPA at this address:

John J. "Jack" Bajor, Jr.
 Water Enforcement Compliance Assurance Branch (WC-15J)
 U.S. Environmental Protection Agency, Region 5

77 West Jackson Boulevard
Chicago, Illinois 60604-3590

45. Respondent must submit all information required by this Agreement under an authorized signature containing the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false statements and information, including the possibility of fines and imprisonment for knowing violations.

46. If the signatory finds that any portion of the submittal is false or incorrect, the signatory must notify EPA immediately. Knowing submittal of false information to EPA in response to this Agreement may subject Respondent to criminal prosecution under Section 309(c) of the Act, 33 U.S.C. § 1319(c), as well as 18 U.S.C. §§ 1001 and 1341.
47. Respondent may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If Respondent fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Effluent data, as defined in 40 C.F.R. § 2.302(a)(2), and information in permit applications is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. 40 C.F.R. § 122.7.
48. EPA may use any information submitted in response to this Agreement in support of an administrative, civil or criminal action against Respondent.
49. The information required to be submitted pursuant to this Agreement is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.* because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.
50. The reporting requirements set forth in Paragraph 42 above last until January 15, 2015 or until the reports required to be submitted by that date are submitted, without regard to any termination of this Agreement.

OTHER MATTERS

51. EPA and Respondent recognize that this Agreement has been negotiated in good faith and that neither consenting to the terms of this Agreement, nor the actions undertaken by Respondent pursuant to this Agreement, constitute an admission of liability.
52. Respondent agrees to the terms of this Agreement and further agrees that it will not contest the basis or validity of this Agreement.
53. This Agreement is not a permit under the Act and does not affect Respondent's responsibility to comply with other federal, state and local laws.
54. This Agreement does not restrict EPA's authority to enforce Section 301(a), 33 U.S.C. § 1311(a), or any other section of the Act, for the violations cited in this ACO, any other violations of the Act or to enforce this Agreement.
55. Failure to comply with this Agreement may subject Respondent to penalties of up to \$37,500 per day for each violation under Section 309 of the Act, 33 U.S.C. § 1319.
56. The terms of this Agreement are binding on Respondent, its assignees and successors.
57. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this Agreement, including, but not limited to, any right of judicial review of the Section 309(a)(3) Agreement under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
58. The signatories to this Agreement certify that they are authorized to execute and legally bind the parties they represent.
59. Respondent must ensure that any contractors and subcontractors who are retained to perform work under this Agreement receive a copy of and comply with this Agreement. Respondent will be responsible for any noncompliance with this Agreement.
60. This Agreement is effective from the date of signature by the Director of the Water Division through January 15, 2015, or until the certification under Paragraph 62 is submitted and approved under Paragraph 63, whichever occurs later.
61. EPA's execution of this Agreement terminates EPA's September 24, 2012 Order, Docket Number V-W-12-AO-14 and Respondent's obligation under that Order to apply for an NPDES permit.

CERTIFICATION OF COMPLETION

62. Within 30 days after Respondent concludes that it has complied with all requirements of this Agreement, Respondent must submit to EPA a written certification of completion summarizing all actions taken to comply with the requirements of this Agreement.
63. After review of Respondent's certification of completion, EPA will notify Respondent whether it has satisfied all requirements of this Agreement.

8-28-13

Ex. 6 (Personal Privacy)

Date

Ex. 6 (Personal Privacy)

Owner, Ex. 6 (Personal Privacy) Farms, Inc.

Pearl City, Illinois

Ex. 6 (Personal Privacy)

8-28-13

Ex. 6 (Personal Privacy)

Date

Ex. 6 (Personal Privacy)

Owner, Ex. 6 (Personal Privacy) Farms, Inc.

Pearl City, Illinois

Date

9-13-13

for

Tinka G. Hyde

Director

Water Division

U.S. EPA Region 5

RECEIVED

AUG 29 2013

WATER ENFORCEMENT & COMPLIANCE
ASSURANCE BRANCH, EPA, REGION 5